

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2325 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASSOCIATED CEMENT COMPANIES LTD.,
SEVALIA CEMENT WORKS & OTHERS.

Versus

STATE OF GUJARAT

Appearance:

MR AJ PANDYA for MR SI NANAVATI for Petitioners
MR NN PANDYA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 21/06/96

ORAL JUDGEMENT

1. A short but an interesting question raised in this Special Civil Application by the petitioners is whether the respondent, the State of Gujarat while compositing the offence punishable under sec.32 of the Bombay Weights and Measures (Enforcement) Act, 1958, (herein after referred to as the Act, 1958) could have charged sum of Rs.20,000/- where on conviction for the

offence committed, the maximum penalty under the said provision is only of Rs.500/-. The counsel for the petitioners submit that the offence committed by the petitioners and composition of which prayed for is punishable under sec. 32 of the Act, 1958. Sec.32 of the Act, 1958 reads as under:

32. Penalty for delivering article in quantity less than or receiving article in quantity more than the quantity fixed by contract.-

(1) Whoever in selling any article by weight or measure delivers or causes to be delivered to the purchaser any quantity of that article, which is less than the quantity fixed by the weight or measure by which the contract or dealing in respect of that article has been made shall, if the deficiency exceeds the prescribed limit or error, be punished with fine which may extend to five hundred rupees.

(2) Whoever in buying any article by weight or measure demands or receives or causes to be demanded or received any quantity of that article in excess of the quantity fixed by the weight or measure by which the contract or dealing in respect of that article has been made, shall be punished with fine which may extend to five hundred rupees.

2. Sec. 37A of the Act, 1958 makes a provision of the composition of the offences, which reads as under:

37A. Composition of offences.-(1) Any offence punishable under section 23, section 24, section 25, section 27, section 28, section 32 or section 34 other than a second or a subsequent offence under section 23, or section 25, may, either before or after the institution of the prosecution, be compounded by the State Government on payment of such sum as the State Government thinks fit.

(2) On payment by the offender of such sum, the offender, if in custody, shall be set at liberty and if any proceedings in any criminal court have been instituted against the offender in respect of the offence the composition shall be deemed to amount to an acquittal and no further criminal proceedings shall be taken against him in respect of such offence.

3. Briefly stated the facts of the case are as under:

The petitioner no.1, The Associated Cement Companies Limited, is a limited company which is engaged in manufacture of cement, has for that purpose, its units at different places, and two of such units are at Sevalia and Porbandar in the State of Gujarat. The remaining petitioners are its designated employees. The first respondent, the State of Gujarat, admittedly has fixed the weight of the cement bags manufactured and supplied by the petitioners to the consumers as 50 kgs. under the Act, 1958. The weight of every bag of cement supplied by the petitioners to the consumers should be of 50 kgs. and if it is not so, then in that case, the petitioners are liable for the prosecution under the provisions of sec. 32 of Act, 1958.

4. The Weights and Measures Inspector of the respondent interacted a truck, bearing No.G.T.F. 3168, loaded with the cement bags after leaving the main gate of the factory premises of petitioner -company. The Weights and Measures Inspector made a surprise checking of this truck carrying cement bags and he checked weight in all 14 bags of the cement. As a result of the said surprise checking, in all, five bags out of 14 bags were found short weight. The five bags were not found of weighing to the standard of the weight as fixed by the Government under the Act, 1958. The petitioners were liable for the prosecution for this offence, and as such, accordingly a criminal complaint had been filed in the Court of Judicial Magistrate. The deficit in the weight of the five bags as found on checking by the Weights and Measures Inspector are as under:

Net weight Weight of cement Exact
found (without weight
bag) found
less.

1. 50 kgs. 45 kgs. 5 kgs.
2. 50 kgs. 45.5 kgs. 4.5 kgs.
3. 50 kgs. 44.0 kgs. 6.0 kgs.
4. 50 kgs. 48.0 kgs. 2.0 kgs.
5. 50 kgs. 48.2 kgs. 1.8 kgs.

The deficit in the weight varied from 1.8 kgs. to 6 kgs.. The petitioners after the challan is filed in the Court against them submitted an application to the concerned authority making prayer therein for composition of the case under sec.37A of the Act, 1958. This

application filed by the petitioners was accepted and the competent authority under its order dated 20th January, 1981 ordered for composition of the offence on payment of total sum of Rs.20,000/-, the details of which are given in the said order. This order is challenged by the petitioners in this Special Civil Application, and only contention made by the learned counsel for the petitioner is that the amount of Rs.20,000/- which has been charged for the composition of the offence punishable under sec.32 of the Act, 1958 is unreasonable and Rs.500/- ought to have only been charged, as this is the maximum penalty which could have been imposed in case if the petitioners on trial of the criminal case would have been found guilty of commission of the offence under sec.32 of the Act, 1958.

5. In this case, rule was issued by this Court on 8-6-1982, and it has been ordered that rule to be heard with Special Civil Application No.1256 of 1982. Ad-interim relief has also been granted by this court in favour of the petitioners in terms of Paragraphs no.12(b) and 12(c). The papers of the Sp.Civil Application No.1256 of 1982 are placed alongwith this Special Civil Application. I have gone through the papers of the Sp. Civil Application No.1256 of 1982. This Special Civil Application has been decided by this Court on 27th July, 1982. The subject matter of the challenge of this Special Civil Application No.1256 of 1982 was the order of the State Government, under sec.37A of the Act, 1958 where under the similar offence committed by the petitioners therein has been compounded subject to the payment of Rs.15000/-. This Special Civil Application pertains to the commission of the offence under sec.32 by the petitioners therein, the Associated Cement Companies Ltd and its designated employees of its porbandar unit. I found from the papers of the Special Civil Application No.1256 of 1982 that earlier also the offence was committed by the company under sec.32 of the Act, 1958, at its Porbandar unit, has been compounded under the order dated 17th June, 1980. Taking into consideration the orders dated 17th June, 1980 and the order dated 6th June, 1981 (which was the subject matter of challenge in Sp. Civil Application No.1256 of 1982), and the order challenged in this Special Civil Application, it is clear that the company and its designated employees are committing the offence of supplying deficit weight cement to the consumers. Though this offence was taken to be very minor offence under the Act, 1958, but it cannot be said to be a minor offence. The cement is one of the essential commodities and the consumers thereof are also poor persons. The manufacturers of the cement are under

a legal obligation to give the consumers, for price paid, cement bag of the weight of 50 kgs. There is permissible variation in the weight, but the deficit of the weight to the extent of 1.8 kg. to 6 kgs. is really shocking. I am constrained to observe that this Act has been enacted in the year 1958, that is to say a period when in the country, the consumption of the cement may not be to the extent high now presently the consumers are consuming. Looking to the fact that the prescribed weight of cement has to be given to the consumers, and any deficit weight in the cement bag beyond the permissible variation should be taken seriously. It is not expected of the consumers to take the bag of the cement after weighing it. Normally, the consumers go by the believe that the manufacturer of the cement has given him the weight as printed on the bag, and provided under the Act, 1958. The sell of deficit weight bag of the cement to the consumers is a fraud on this class of persons, and if such a thing is taken lightly, as it transpires from the provisions of sec.32 of Act, 1958, the consumers will be the sufferers, and the cement companies will be the gainers. The price is charged for the weight of 50 kgs. and the cement given is deficit in weight. So it is a case where the manufacturers are also earning a profit more than what it can have on the bag of the weight of 50 kgs. Taking into consideration all these facts, the respondent no.1 may consider to make such an offence to be a serious offence and it may be made heavily punishable so that the poor consumers may not have to suffer and the manufacturers may not be enriched. An amendment may be made to deal with such a serious offence. As the matter is to be taken by the legislature and not by this Court, this Court can only make recommendation for the consideration of this matter.

6. The facts of this case speak themselves. At two units of the petitioners' company, there were offences of deficit weight of the cement in the bags. It is done at both the units, namely Sevalia and Porbandar. It is not only one case, but after going through the record of the other petition, the papers of which have been tagged to this Special Civil Application, it is a case where consistently offence has been committed. On earlier occasion, the State Government itself has compounded the offence for Rs.500/- and in the second case, this Court has set aside the order of the State Government, and compounding of the offence was ordered to be only for Rs.500/-. This is another case of deficit weight of cement bags. The facts of this case, if we consider, itself gives an answer. The possibility of taking this matter to be lightly by the petitioners cannot be

overruled because of the fact that ultimately for such a serious offence, the maximum penalty is only of Rs.500/-. Nobody will be afraid of committing such an offence because the maximum penalty is only Rs.500/-. This provision gives an encouragement to the petitioners to repeat such an offence and play with the consumers and earn profit more than what they would have. Looking to the fact that the matter relates to the essential commodity such as cement, which is to be consumed by all class of persons, the price can only be taken for the standard weight of the bag as laid down by the State Government. The necessary amendment may be made in the provisions of sec.32 of Act, 1958 to make this offence to be severely dealt with.

7. The validity of the provisions of sec. 37A of the Act, 1958 has not been questioned by the petitioners in this Sp. Civil Application. The only contention raised is that the amount for compounding of the offence could not be more than Rs.500/-, the maximum penalty as provided under sec.32 of the Act, is not acceptable. Sec. 37A of the Act empowers the State Government to compound the offence punishable under sec. 32 of the Act, on payment of such sum as the State Government thinks fit. The petitioners had applied for the compounding of the offence under this provision by moving an application. The compounding of the offence had been sought for as the petitioners wanted to avoid their prosecution under the provisions of sec.32 of the Act, 1958. It is not a case of what the maximum penalty has been provided for the offence, but it is a case that against the petitioners, a prosecution has been lodged, and on their conviction therein there may be so many other difficulties. Many of the petitioners would have incurred disqualification for employment on their conviction for the offence under sec. 32 of the Act, 1958. If it would have been a simple matter of penalty of Rs.500/- as sought to be now projected by the petitioner then why they have not faced the prosecution and decided to go to the Government with the application for compounding of the offence under sec.37A of the Act, 1958. The petitioners have invited the provisions of sec.37A of the Act, 1958. Sec.37A of the Act, 1958 gives ample powers to the Government to compound the offence on payment of such sum as the State Government thinks fit. It is for the State Government to decide what is the sum on which the offence against the petitioners could be compounded. From the order dated 20th January, 1981, it is clear that the offence against the petitioners were compounded on different sum of the amount. The offence against the petitioner no.1 was ordered to be compounded

on a sum of Rs.8000/-, against the petitioner no.2 who is the General Manager, the offence was ordered to be compounded on payment of sum of Rs.6000/-, and the other petitioners who are the Manager (Engineer), Plant Engineer and Packing House Foreman have been ordered to pay Rs.2000/- each as a sum of the amount for the compounding of the offence. The total figure comes to Rs.20,000/and not individually the petitioners have been ordered to pay Rs.20,000/-. After going through the order and the provisions of sec.37A of the Act, 1958, it cannot be said that the respondent no.1 has acted arbitrarily. No restriction whatsoever has been put by the legislature on the sum of the amount which has to be taken for the compounding of the offence from the accused. In case if it would have been the intention of the legislature that while compounding the offence, the amount should not exceed Rs.500/-, it could have been made clear, but the very fact that the legislature has provided composition of offences on such sum as the State Government thinks fit has given sufficient discretion to the State Government. The provisions of sec.37A of the Act, 1958, cannot be read subject to the provisions of sec.32. In case, contention of the counsel for the petitioner is acceptable then this Court has to read the word 'such sum as the State Government thinks fit not exceeding Rs.500/-' in sec.37A of the Act, 1958. The provisions of the Act has to be taken as such as it has been enacted by the State legislature. There is no ambiguity whatsoever in the provisions. The provisions as contained under sec.37A of the Act, 1958 are clear. This Court will not add something to the provisions which the legislature was not intending.

8. From the record of this case as stated earlier, three offences punishable under sec.32 of the Act, 1958 were compounded against the petitioners' company at two different units. This company repeated the offence and is in a habit of supplying the deficit quantity of cement to the consumers. In such case, another question arises, whether sitting under Article 226 of the Constitution of India, this Court should grant an indulgence to a person of this character. The Company is manufacturing cement and the cement should have been supplied to the consumers in the bags of the weight as prescribed by the Government under the Act, 1958. Any deficiency exceeds the prescribed limit or error, is a serious offence which is punishable under sec.32. Here is a case where time to time as and when checking has been made, the cement bags were found deficit in the weight exceeding the prescribed limit and errors. In such cases no lenient view should be taken atleast by this Court. It is a different matter

that the legislature has made such a serious offence to be punished by maximum fine of Rs.500/-, but when repeatedly such an offence is committed by the petitioners, this Court should not interfere with the order and no leniency should be shown. Moreover, when sec.37A of the Act, 1958 has given sufficient powers to charge such sum as the State Government thinks fit, there is no equity in favour of the petitioner which warrants any indulgence to be granted to the petitioners in this case. It is not a case where everyday the cement bags are being checked. It was a surprise checking otherwise the possibility of every day deficit weight bags of the cement, supplied to the consumers cannot be overruled. In the result, this Sp. Civil Application fails and the same is dismissed with costs of Rs.10,000/-. Out of this Rs.10,000/- of the costs, the petitioner, The Associated Cement Companies Ltd. is directed to pay or deposit, Rs.5000/- in the office of Gujarat State Legal Aid & Advise Board, High Court Building, Navrangpura, Ahmedabad. The company is further directed to pay or deposit this amount in the office of Gujarat State Legal Aid & Advise Board within a period of two months from today and the receipt of the deposit of the amount should be produced on the record of this Special Civil Application. Remaining amount of costs, Rs.5000/- shall be deposited by the petitioner with the Advocates' Welfare Fund of the Gujarat Bar Council within two months from today and receipt of the deposit of the amount should be produced on the record of this Special Civil Application. It is further made clear that in case, compliance of this order is not made by the petitioner no.1, it shall be open to the Secretary, Gujarat State Legal Aid & Advise Board, High Court Building, Navrangpura, Ahmedabad and Secretary, Bar Council of Gujarat to take appropriate action for recovery of this amount including filing of contempt petition. The Registrar is directed to send a copy of this judgment to the Secretary, Gujarat State Legal Aid & Advise Board and also to the Chief Secretary of Government of Gujarat.
